



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/148445

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on May 14, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency denied petitioner's application for MA due to excess assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lori Rutzinski

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 10, 2013 petitioner passed away.

3. On February 14, 2013 an application for Institutional MA was filed on petitioner's behalf with a backdate request to December 2012.
4. Prior to her death, petitioner had two life insurance policies. One was valued at \$5174.38. See Exhibit 2. The other was valued at \$2184.70. See Exhibit 1.
5. On March 29, 2013 the agency issued a notice of decision stating that the application was denied because petitioner was over the asset limit. Exhibit 3.

DISCUSSION

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. See *Medicaid Eligibility Handbook (MEH)*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. An individual is financially eligible for EBD-MA if the total value of all non-exempt liquid assets does not exceed \$2,000. Wis. Stats. §49.47(4)(b). The clear, unambiguous language of both Wis. Stat. §49.47(4)(b), and Wis. Admin. Code §DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until the actual date an individual's liquid assets fall below \$2,000, an individual is ineligible for MA.

As part of the eligibility determination, the agency is required to take into account certain assets owned by the petitioner. *MEH*, §16.1. There was no dispute that the two life insurance policies were assets owned by petitioner prior to her death, and that their value would put her over the asset limit. The petitioner's representative testified at hearing that he was attempting to convert the life insurance policies into an irrevocable burial trust prior to petitioner's passing, however, she died before that could be accomplished. Nonetheless, the agency considered the funeral expenses paid out by the life insurance policy (\$3901.85) as exempt assets for purposes of MA eligibility. The total remainder of the policy benefit was paid out to the nursing home where petitioner had been residing; however, the agency did not exempt that remaining portion as an exempt asset.

While I certainly understand that the timing of these events has caused difficulty for petitioner's representative, I do not have the authority to change the result based on fairness. The language of the law is clear that eligibility cannot exist prior to the date on which all eligibility requirements are met, and petitioner held assets in excess of the \$2000 limit. I add, assuming he finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. As such, I must find that the agency acted correctly in denying the application due to excess assets.

CONCLUSIONS OF LAW

The agency denied petitioner's application for MA due to excess assets.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of July, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 5, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability